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In the Supreme Court of the United States

OCTOBER TERM, 1954

No. —

INTERSTATE COMMERCE COMMISSION, PETITIONER

v.

ALLEN E. KROBLIN, INC., RESPONDENT

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

Petitioner, Interstate Commerce Commission, prays that a writ of certiorari issue to review a judgment of the United States Court of Appeals for the Eighth Circuit entered on May 11, 1954 (R-87), affirming a judgment of the United States District Court for the Northern District of Iowa entered on June 30, 1953 (R-76).

OPINIONS BELOW

The opinion of the Court of Appeals (R-81) is reported in 212 F. (2d) 555, The opinion of that Court is attached hereto as appendix A, pp. 23 to 28, hereof. U. S. C. 1254(1) and Rule 19, Subsection (1)(b) and Rule 23(g), (h) of the Revised Rules of the Supreme Court of the United States.

JURISDICTION TO REVIEW

The jurisdiction of this Court is invoked under 28 U. S. C. 1254(1) and Rule 19, Subsection (1) (b) and Rule 23(g), (h) of the Revised Rules of the Supreme Court of the United States.

QUESTION PRESENTED

Whether New York dressed and eviscerated poultry constitute "manufactured" products of an agricultural commodity and do not fall within the exemption in Section 203(b)(6) of the Interstate Commerce Act (Title 49, U. S. Code 303(b)(6)), which exempts from the provisions of the Interstate Commerce Act (except the provisions of Section 204 thereof relating to safety of operation of motor vehicles) "motor vehicles used in carrying property consisting of ordinary livestock, fish (including shellfish), or agricultural (including horticultural)[1] commodities (not including manufactured products thereof), if such motor vehicles are not used in carrying any other property, or passengers, for compensation."

STATUTES INVOLVED

These pertinent provisions of the Interstate Commerce Act are set forth in appendix B, pp. 28 to 34 hereof, consisting of the National Transportation Policy, Sections 203(a)(14), 203(a)(15), 203(a)(16), 203(b)(6), 206(a), 209(a), and 222(b).

STATEMENT OF THE CASE

The petitioner, Interstate Commerce Commission, is an agency of the United States Government having been established by an Act of Congress (49 U. S. Code 11) and is vested with the duty to regulate commerce pursuant to the provisions of the Interstate Commerce Act (49 U. S. Code, Chapters 1, 8, 12, 13).

On October 17, 1952, the Commission filed a complaint against respondent in the United States District Court for the Northern District of Iowa (amended January

[1] "Including horticultural" was added by Act approved July 9, 1952 (66 Stat. L. 479).

7, 1953), alleging that it was unlawfully transporting New York dressed and eviscerated poultry in interstate commerce for compensation as a motor carrier without a certificate of public convenience and necessity, a permit, or any authority whatsoever, issued by the Commission, in violation of Sections 206(a) and 209(a) of said Act (49 U. S. Code 306(a), 309(a)). The relief sought therein was to restrain and enjoin further operations until such time as proper authority is obtained from the Commission (R-3). The action was instituted by the Commission under authority of Sections 204(a)(6) and 222(b) of the Interstate Commerce Act (49 U. S. Code, 304(a)(6) and 322(b)).

Respondent's answers (R-5 and R-7) admitted that it was so engaged in the transportation of both New York dressed and eviscerated poultry but denied that the transportation was unlawful on the ground that the commodity fell within the exemption found in Section 203(b)(6) of the Interstate Commerce Act as to "agricultural commodities (not including manufactured products thereof)" and for that reason no authority from the Interstate Commerce Commission was required for such transportation.

After filing the suit, a pre-trial stipulation was made and entered which set forth these agreed facts (R-8 to 11). Respondent's shippers, who operate plants at various places in Iowa, purchase poultry from farms and kill and dress the poultry at their plants before shipping it to dealers. Each plant is equipped with a production chain upon which the fowls are placed and killed. They are then moved on the chain through various stages of processing which consist of removing the feathers, singeing, rubbing and storing in a refrigerated room for pre-cooling to a specific temperature

prior to shipment. New York dressed poultry is poultry with the head and feathers removed. Eviscerated poultry has the head, feet, feathers and entrails removed and the liver, heart and gizzard cleaned, wrapped and replaced in the carcass. Poultry raising is an important segment of agriculture in the State of Iowa and dressed poultry is a major farm product of the state. The shipping of dressed poultry is seasonal in nature and, with very few exceptions, all dressed poultry is hauled between September 1st and December 31st. The growth of the poultry dressing plants in Iowa in recent years has been the result of increased public demands for fresh poultry as an item of food.

The suit came on for trial on January 7, 1953, at which time the stipulation of agreed facts was presented to the Court. Briefs were filed and the hearing of oral argument was had before the United States District Court on May 6, 1953, which rendered its judgment for respondent (R-76) on June 30, 1953.

The matter was then appealed to the Court of Appeals for the Eighth Circuit. Briefs were duly filed and oral argument had on December 7, 1953.

On May 11, 1954, the Court of Appeals filed its opinion affirming the judgment of the District Court. The Mandate in accordance with this opinion has been entered.

REASONS FOR GRANTING THE WRIT

Questions presented are gravely important to maintenance of national transportation system by motor vehicles, efficient and adequate for needs of commerce, postal service, and national defense. Congress some twenty years ago placed motor carrier service under regulations embodied in part II of the Interstate Com-

merce Act. It was not intended to extend the exemption provision to transportation of favored commodities, to the point that would effectively destroy regulation of the motor carrier industry. The interpretation of the exempt provisions by the court below, in effect overrules Commission interpretation and application of those provisions, which have been accepted by industry, carriers, and courts for some 15 years, with many uncontested prosecutions and injunctions, under Section 222(a) and (b), (49 U. S. C. 322(a)(b)), against motor carriers operating contrary to the Commission interpretation and application. The interpretation of the court below is in conflict with decisions of other circuit courts of appeals, and, if allowed to become the final judicial decision upon the subject, would result in restoring a vast amount of traffic to the unregulated class, resulting in abuses and chaos which led Congress to adopt the original motor carrier act.

The decision of the Court of Appeals is one concerning an important question of federal law which has not been, but should be, settled by this Court (Rule 19(b), Revised Rules of the Supreme Court). We believe that the decision is erroneous for the following reasons.

1. The Interstate Commerce Act, being remedial legislation, must be liberally construed to effect its evident purpose; and Section 203(b)(6), providing an exemption from the general provisions of the Act, must be strictly construed

This proposition is so well established as to be beyond challenge. *I. C. C.* v. *Weldon,* 90 F. Supp. 873, 875, aff. 188 F. 2d 367, cert. den. 342 U. S. 827; *Walling* v. *Bay State Dredging Co.,* 149 F. 2d 346; *Piedmont & Northern R. Co.* v. *I. C. C.,* 286 U. S. 299, 311-12.

2. The Commission having consistently construed Section 203 (b)(6) as not exempting motor vehicles used to transport dressed poultry, its decisions to that effect are entitled to great weight and should not be overturned unless arbitrary or clearly erroneous

This well-known rule of statutory construction was recognized by the Court in the *Weldon* case, supra, and was stated in the following language (90 F. Supp. 877):

> The contemporaneous constructions placed upon the provisions of the Interstate Commerce Act by the Commission which possesses special competence in this field, are entitled to great weight and respect and will not be overturned unless they are arbitrary or plainly erroneous. *New York, N. H. & Hartford RR. Co.* v. *Interstate Commerce Commission,* 200 U. S. 361, 402; *Brewster* v. *Gage, Collector of Int. Revenue,* 280 U. S. 327, 336.

In applying the above principle, the Court should take into consideration in evaluating the agency decision the following questions: (1) has the agency been uniform in its interpretation; (2) is the interpretation new or has it been in effect for a long period and has it been accepted by the public as being proper construction; (3) is the agency decision one which was carefully considered and is there substantial merit to the position which the agency took; and (4) is the decision by the agency arbitrary and capricious?

The position of the Commission that dressed poultry is not an exempt agricultural commodity is of long standing. The first reported decision of the Commission on dressed poultry is the case of *Frank Battaglia Common Carrier Application,* reported in 18 M.C.C. 167, decided by the Commisison in May, 1939. A joint

board consisting of officials from the States of California, Washington and Oregon heard the evidence and served upon parties to the proceeding a copy of its proposed report and decision which was duly considered by the Commission and adopted. The application sought a certificate to haul butter, cheese, eggs and dressed poultry. The joint board pointed out that if no commodities were involved other than unmanufactured agricultural commodities the applicant needed no authority. Although denying the application, the joint board concluded that butter, cheese, and dressed poultry were manufactured commodities for which authority was necessary. The position taken by the Commission in that that proceeding with respect to dressed poultry has remained unchanged for 14 years.

The next reported decision with respect to dressed poultry was *Monark Egg Corporation Contract Carrier Application,* 26 M.C.C. 615, decided November 7, 1940, in which the Commission held that the transportation of dressed poultry required authority. Following that decision petitions were filed with the Commission by various persons interested in the commodity, including the Department of Agriculture, asking reconsideration. The case was re-opened and set for further hearing. On October 2, 1944, the Commission, Division 5, issued a report, again holding that dressed poultry was not an unmanufactured agricultural commodity (44 M.C.C. 15).

After discussing the applicability of the exemption to certain other commodities, the report (at pp. 19-20) stated with respect to dressed poultry:

> We found in the prior report that the term "ordinary livestock" embraced poultry as well as cattle, horses, sheep, et cetera, but that dressed

poultry, picked but not drawn, "does not come within the term livestock." In view of the definition of ordinary livestock set forth in Section 20(11), which the legislative history above-discussed indicates should be applied also to the term as used in Section 203(b)(6), it is apparent that poultry in any condition is not "ordinary livestock". However, they are raised on the farm, and clearly are included within the broader description "agricultural commodities." It therefore becomes necessary to determine whether poultry which have been killed and picked but not drawn are unmanufactured agricultural commodities within the meaning of the present exemption.

As in the case of shelled pecans and walnuts, there is a complete absence of any showing of the customs and practices obtaining in the marketing of poultry, but certain facts in this connection are so well known that we may take cognizance of them for the purpose of the present determination. *It is common knowledge that, generally, farmers do not kill and pick poultry in marketing it.* Probably without exception, or at most, with rare exceptions, *the commercial killing and dressing of poultry is done by meat-packing companies or by special poultry packers. Its subsequent transportation is under refrigeration. As such it can no longer be considered an unmanufactured agricultural commodity.* (Emphasis added)

Later, extensive hearings were held in a proceeding instituted by the Commission known as *Determination of Exempt Agricultural Commodities,* 52 M.C.C. 511, at which representatives of the Department of Agricul-

ture, a large number of states, agricultural marketing associations, farmer associations, shippers, growers, carriers, and other interested parties appeared and submitted evidence. The proceeding was finally concluded by a decision of the entire Commission in which the Commission again held that dressed poultry was not an exempt agricultural commodity.

The Commission's interpretation has been accepted and numerous operating authorities have been obtained to transport dressed poultry. Carriers engaging in the transportation of the commodity without authority have been criminally prosecuted and convicted. It is submitted that the Commission's interpretation meets all of the tests recited. The Commission has been uniform in its interpretation; the interpretation is of long standing and has been accepted by the public as being a proper construction; the decision is one arrived at after careful consideration, and it is certainly in no sense arbitrary or capricious. The interpretation, therefore, should be accorded great weight.

3. The Commission's interpretation of Section 203(b)(6) as applied to dressed poultry is in accord with decisions of the courts

The views of the Commission as expressed in the two *Monark* decisions, supra, were concurred in by the United States District Court for the Western District of Tennessee in the case of *I. C. C.* v. *Weldon,* 90 F. Supp. 873, supra, decided in 1950, prior to the Commission's decision in the *Determination* proceeding, but in substantial accord therewith. The question before the Court in the *Weldon* case, closely similar to the one here considered, was whether the agricultural exemption was applicable to the transportation of raw

shelled peanuts. The following is quoted from the Court's opinion (p. 875, 876):

> The provision of Section 203(b)(6) under consideration is an exemption from the general terms of the statute and as such must be strictly construed. *Piedmont & Northern R. Co.* v. *Interstate Commerce Commission,* 286 U. S. 299, 52 S. Ct. 541, 76 L. Ed. 1115.
>
> Of course, it is a primary rule of construction of statutes to ascertain and declare the intention of the legislative body. *United States* v. *Cooper Corp.,* 312 U. S. 600, 606, 61 S. Ct. 742, 85 L. Ed. 1071.
>
> The problem is not entirely free from difficulty, but the Court finds that Congress clearly intended, from the language, to exclude only "agricultural commodities" *in their natural state.* This seems the only reasonable construction of which the phrase of the exemption in question is susceptible. * * * (Emphasis supplied)
>
> Under the facts here the producer, or farmer, parts with all of his right, title and interest in the peanuts produced by him on delivery and sale to the shelling plant. There must be a time when peanuts cease to be products of the farm and are considered manufactured articles and it seems appropriate in dealing with the question here involved to say that peanuts are a manufactured product from the time same are sold by the farmer and shelled at the shelling plant.
>
> * * * Raw materials may be subject to successive processes of manufacture, *each of which is complete in itself,* but several of which may be

required to make the finished product. (Emphasis supplied)

* * * Since the parenthetical phrase "not including manufactured products thereof" in the exemption was undoubtedly inserted by Congress to express the *limited scope of the term* "agricultural commodities", it naturally follows in an interpretation of Section 203(b)(6), that Congress intended to exclude from regulation only vehicles carrying agricultural products *in their natural state* and not manufactured products. (Emphasis supplied)

The Court had this to say with respect to the Commission's interpretation (p. 877):

> The contemporaneous constructions placed upon the provisions of the Interstate Commerce Act by the Commision which possesses special competence in this field, are entitled to great weight and respect and will not be overturned unless they are arbitrary or plainly erroneous. *New York, N. H. & Hartford R.R. Co.* v. *Interstate Commerce Commission,* 200 U. S. 361, 402, 26 S. Ct. 272, 50 L. Ed. 515; * * *.

The decision of the District Court in the *Weldon* case to the effect that vehicles used to transport shelled raw peanuts were not within the exemption, was appealed to the United States Court of Appeals for the Sixth Circuit where the judgment was "affirmed upon the grounds and for the reasons set forth in the memorandum opinion of the District Court." *Weldon* v. *I.C.C.,* 188 F. 2d 367. Weldon's petition for certiorari was denied by the Supreme Court, 342 U. S. 827.

4. The Commission's interpretation is in accord with the legislative intent

It is the respondent's position that the method of processing whereby live poultry becomes dressed poultry does not constitute a "manufacture". Rigid definitions of words isolated from the context of a statute are of little if any value and may not be resorted to where by so doing the purpose of the law would be defeated. The Supreme Court has made clear its attitude toward depending upon mere definitions of words in construing the mandates of Congress where such definitions, irrespective of their lexicographical correctness, would defeat the purpose of the law itself. In the case of *United States* v. *American Trucking Associations,* 310 U. S. 534, in which the Court had under consideration the meaning of another provision of this same Act, it said (pp. 542-544):

> In the interpretation of statutes, the function of the courts is easily stated. It is to construe the language so as to give effect to the intent of Congress. There is no invariable rule for the discovery of that intention. *To take a few words from their context and with them thus isolated to attempt to determine their meaning, certainly would not contribute greatly to the discovery of the purpose of the draftsmen of a statute, particularly in a law drawn to meet many needs of a major occupation.*
>
> There is, of course, no more persuasive evidence of the purpose of a statute than the words by which the legislature undertook to give expression to its wishes. Often these words are sufficient in and of themselves to determine the purpose of the legislation. In such cases we have followed their plain

> meaning. When that meaning has led to absurd or futile results, however, this Court has looked beyond the words to the purpose of the act. Frequently, *however, even when the plain meaning did not produce absurd results but merely an unreasonable one "plainly at variance with the policy of the legislation as a whole" this Court has followed that purpose, rather than the literal words.* When aid to construction of the meaning of words, as used in the statute, is available, there certainly can be no "rule of law" which forbids its use, however clear the words may appear on "superficial examination". (Emphasis supplied)

There the Supreme Court emphasized that it will look to the spirit of the law and the purpose and policy of the legislation rather than be satisfied with mere definitions of particular words. That this is the function of the court is made clear by the language, "even when the plain meaning did not produce absurd results but merely an unreasonable one 'plainly at variance with the policy of the legislation as a whole' this Court has followed that purpose, rather than the literal words." The purpose of the statute and the intent of Congress in enacting it are controlling over the literal meaning of the language used. This principle was stated by the Supreme Court in *Fleishman Construction Co.* v. *United States,* 270 U. S. 347, 360:

> The strict letter of an act must, however, yield to its evident spirit and purposes, when this is necessary to give effect to the intent of Congress. *Holy Trinity Church* v. *United States,* 143 U. S. 457, 459; *Ozawa* v. *United States,* 260 U. S. 178, 194.

Stated otherwise, a statute will not be held strictly to its letter if that will defeat its intended purpose. This principle is supported by a host of authorities, examples of which are *Commissioner of Internal Revenue* v. *Hopkinson,* 126 F. 2d 406; *Commissioner of Internal Revenue* v. *Strong Manufacturing Co.,* 124 F. 2d 360. And it has been held that a Court will look beyond mere phraseology of statutes to get the substance and effect. *Texas Co.* v. *Carmichael,* 13 F. Supp. 242; affirmed in *Graves* v. *Texas Co.,* 298 U. S. 393.

What, then, was the purpose of the lawmakers in writing Section 203(b)(6) into Part II of the Interstate Commerce Act? An examination of the legislative history shows beyond question, as the Commission found in the *Determination* case, supra, that the "object [of the exemption] was to help the farmer and keep him out of any regulation whatsoever insofar as handling unprocessed agricultural products or livestock on the farm." (52 M.C.C. 516; Cong. Record, Vol. 79, Part II, p. 12213)

Further on this question, the Commission's report in the *Determination* case recites (52 M.C.C. 516):

> The meaning of the term "unprocessed agricultural products" was the subject of considerable debate on the floor of the House and was explained in part by several members of the House Committee on Interstate and Foreign Commerce. For instance, one committee member stated that the term embraced "anything that has not been canned or manufactured or processed", and that it would include cream and milk. He further agreed that the term "includes all farm commodities produced upon any farm in the raw state ready for market",

and stated that "on the whole, that is the way the Commission will interpret it and undoubtedly, the courts will give the same interpretation to it."

In order to meet the views of many members of the House, the chairman of the subcommittee in charge of the legislation moved to strike the phrase "unprocessed agricultural products" and in lieu thereof to substitute the words "agricultural commodities (not including manufactured products thereof)". He explained the purpose of the proposed amendment as follows:

> Mr. Chairman, we have heard a good deal of discussion this afternoon as to what is a processed agricultural product, whether that would include pasteurized milk or ginned cotton. It was not the intent of the Committee that it should include those products. Therefore, to meet the views of many Members we thought we would strike out the word "unprocessed" and make it apply only to manufactured products.

The sponsor of this amendment further explained that cotton in bales and cotton seed transported from gins to market or to a public warehouse would come under the partial exemption whereas they might not otherwise come within the exemption "since ginning is sometimes considered as processing." The amendment was thereupon adopted. The bill was further amended in certain other respects not material to the matter immediately under discussion. Upon the return of the bill to the Senate, the Chairman of the Senate Committee on Interstate Commerce explained the House amendments generally as liberalizing the provisions

of the measure, and stated that they improved the bill and met with his approval. The House amendments were thereupon concurred in by the Senate.

The history of the legislation is not wholly clear as to the intent of Congress, except that the *partial exemption was to aid the farmer.* * * * (Emphasis supplied)

The legislative purpose is more completely shown by the following quotations from the debate on the bill when it was before the House (page 12205 of Volume 79, Part II, of the Congressional Record):

Mr. Andresen: What is the definition of the Committee with reference to "other unprocessed farm commodities?" What does that include?

Mr. Sadowski: Anything that has not been *canned* or *manufactured* or *processed . . . Everything that is not processed.*

Mr. Andresen: This is a very important proposition the gentleman is on right now. *It is clear, then, that it includes all farm commodities, produced upon any farm in the raw state ready for market.*

Mr. Sadowski: On the whole, *that is the way the Commission will interpret it. Undoubtedly, the courts will give the same interpretation to it.* (Emphasis supplied)

Here the intention of Congress was crystallized. There is not a word of disagreement on this point in the debates and discussion in the House, and there was subsequent concurrence in the Senate. The agricultural commodities to be exempted, in the words of the man who had charge of the bill in the House and who was a

member of the committee which had added the exemption to the Senate bill, were, "anything that has not been canned or manufactured or processed . . . Everything that is not processed." And he stated the Commission would interpret it and that the Courts undoubtedly would interpret it as including "all farm commodities produced upon any farm in the raw state ready for market." As already shown, the Commission and at least one Federal District Court have interpreted "agricultural commodities" in accordance with the statements just quoted.

Before the House there ensued a lengthy discussion of the term "unprocessed agricultural products", all showing the unmistakable purpose to provide exemption for the benefit of the farmer, either when performing transportation of his products "in the raw state" for himself or when his products are transported to market for him by someone else. It is obvious from the speeches made in the House that there was no intention to extend such benefits to commercial truckers or to others than farmers. This may be seen from the following appearing at page 12213, Congressional Record, Vol. 79, Part II:

> Mr. Gillette: . . . What was the object in providing an exemption for carriers of livestock exclusively or farm products exclusively? Why not regulate that? What was the object of the exemption?
>
> Mr. Holmes: *The object was to help the farmer,* and keep him out of any regulation whatsoever insofar as handling unprocessed agricultural products or livestock on the farm . . . The purpose of this exemption is that a man who may take a bag

> of beans or a bushel of potatoes or any other unprocessed agricultural commodity and put it on his truck cannot get exemption from regulation and *then go into the general trucking business in competition with his neighbor who has a legitimate permit* to operate as a contract carrier. (Emphasis supplied)

In the *Determination* case, supra, at page 546, the Commission pointed out that the words "Agricultural Commodities (not including manufactured products thereof)" do not include ordinary livestock which is separately mentioned in Section 203(b)(6). After the amendment of Section 203(b)(6) in 1940 by adding the word "ordinary" before the word "livestock", the Commission followed the definition of ordinary livestock found in Section 20(11) of the Act reading:

> The term "ordinary livestock" shall include all cattle, swine, sheep, goats, horses, and mules, except such as are chiefly valuable for breeding, racing, show purposes, or other special uses.

The Commission went on to say in the *Determination* case that poultry are included in the broader description "agricultural comodities", and on page 547 we find this conclusion:

> * * * But slaughtered animals are not embraced in the definition of ordinary livestock and we are impelled to conclude that the products thereof, such as fresh meat and meat products, do not fall within the description "agricultural commodities" as used in Section 203(b)(6). It logically follows that neither killed poultry nor any products

thereof come within the term under consideration. We conclude that *poultry other than alive is not an agricultural commodity* within the meaning of Section 203(b)(6). * * * (Emphasis supplied.)

It is clear that the definition of ordinary livestock in Section 20(11) of the Act excludes poultry. Poultry is not ordinary livestock, and since it was not specifically exempted in the Act by name, the only language under which it might be included within the exemption was the term "agricultural commodities." The Commission has so interpreted its status, which it could very logically do on the theory that if Congress intended live farm animals to be exempt it intended live poultry to be exempt. If Congress had intended slaughtered farm animals to be exempt, it would not have stopped by exempting ordinary livestock but would have exempted the meat products thereof. Obviously, therefore, Congress did not intend to exempt the meat products of ordinary livestock. By the same token, if Congress did not intend to exempt slaughtered animals and meat products, it logically follows that it did not intend to exempt killed and dressed poultry. Surely Congress did not intend to give the poultry packers advantages which it had not given meat packers.

The Commission, recognizing and accepting the Congressional intent to aid the farmer, by interpretation placed live poultry within the exemption as being an "agricultural commodity". It submits that the exemption of dressed poultry would be an unwarranted extension of the Commission's interpretation and at variance with the Congressional intent. If the Court's interpretation as to dressed poultry stands, what is to prevent the extension of the exemption to embrace all meat

products and bring the gigantic packing industry within the exemption, destroying the value of hundreds of certificates and permits as well as bringing chaos and instability to the packing industry? At least so far it has not been contended that a beef carcass or the meat products of slaughtered farm animals are within the exemption, or that they are agricultural commodities simply because the animals were raised on the farm. Yet cattle and hogs are products of the farm just as is poultry. The principal difference between the two is the size of the animals and perhaps the degree of processing occasioned by the size of the animals. As the Court said in the *Weldon* case, *supra,* under which it held raw shelled peanuts to be a manufactured product:

> There must be a time when peanuts cease to be products of the farm and are considered manufactured articles and it seems appropriate in dealing with the question here involved to say that peanuts are a manufactured product from the time same are sold by the farmer and shelled at the shelling plant.
>
> There would seem to be no good reason to conclude that some later treatment, or process, such as the making of peanut butter or confections should be the criterion in determining when a product of the soil is transformed into a manufactured item.

By the same token, there must be a logical point at which the very important benefits of regulation come into play with respect to the poultry packing industry and the Commission submits that there is no more logical point than the point at which the farmer's interest in the commodity stops and the interests of the meat packer and the commercial trucker begin.

As has been pointed out herein, the Commission's interpretation that dressed poultry is not exempted under the terms of Section 203(b)(6) has stood for fourteen years. Despite the Commission's position, Congress has not changed the Act to upset that position, although the exemption has been amended three times since the Commission's original decision on dressed poultry. The latest amendment was in 1952 at which time "horticultural" commodities were included. That change was made after the Commission had held in the *Determination* case that nursery stock, flowers, and bulbs were not agricultural commodities. The fact that Congress has not taken corresponding action to overcome the Commission's position on dressed poultry would seem to indicate that the Commission's interpretation has met with Congressional approval.

The Commission submits that its interpretation that dressed poultry is a manufactured product is logical and sound and is in accord with the standards enunciated by the Supreme Court in the case of *Fruit Growers, Inc.* v. *Brogdex Co.*, 283 U. S. 1, cited in the District Court's opinion (R. 25). Applying those standards, the act of converting a live chicken to a dressed product must be considered as one of manufacturing. Such a conversion includes many pronounced changes in the form, qualities and properties of the chicken; particularly is this evident when one envisions the change from a commodity transported in coops in open trucks to a highly perishable product requiring the use of refrigeration for its transportation.

The Commission also submits that an interpretation contrary to the one made by it would exempt large commercial truckers of dressed poultry from the regulatory

provisions of the statute as to operating authority (49 U.S. Code 306, 309), rates (49 U.S. Code 317, 318), and insurance (49 U.S. Code 316), would be contrary to the legislative intent in enacting the exemption provisions, and would serve to defeat the National Transportation Policy.

The National Transportation Policy, the Supreme Court has said, is "the Commission's guide to the public interest." *McLean Trucking Co.* v. *United States,* 321 U.S. 67, 82. The Commission and the Courts are required to administer the Interstate Commerce Act in accordance with that policy. When it is so administered, and Section 203(b)(6) is given the interpretation that the Commission submits Congress intended, the Commission believes the conclusion must be that respondent's transportation of dressed poultry was not and is not within the partial exemption provided by the said Section.

CONCLUSION

For the reasons stated herein, it is respectfully submitted that this petition for the writ of certiorari should be granted.

EDWARD M. REIDY,
General Counsel,
Interstate Commerce Commission.
ALLEN CRENSHAW,
Associate General Counsel.

APPENDIX A

The opinion of the Court of Appeals dated May 11, 1954, from which this writ is sought reads as follows:

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No. 14,921

INTERSTATE COMMERCE COMMISSION, APPELLANT

vs.

ALLEN E. KROBLIN, INCORPORATED, APPELLEE

Appeal from the United States District Court for the Northern District of Iowa

[May 11, 1954]

Asa J. Merrill, Attorney, Interstate Commerce Commission (James A. Murray and Donald R. Partney on the brief), for Appellant.

David Axelrod for Amicus Curiae, David Axelrod and Carl S. Steiner, in support of the position of Appellant.

Craig H. Mosier (Mosier & Mosier on the brief), for Appellee.

Donald A. Campbell, Attorney, Department of Agriculture (Neil Brooks, Associate Solicitor, on the brief), for Amicus Curiae, the Secretary of Agriculture of the United States, in support of the position of Appellee.

Before SANBORN, WOODROUGH and JOHNSEN, Circuit Judges

JOHNSEN, Circuit Judge:

The Interstate Commerce Commission sought to enjoin Allen E. Kroblin, Inc., an Iowa trucking corpora-

tion, from hauling dressed poultry [1] in interstate commerce, because it had no certificate of convenience and necessity from the Commission, 49 U. S. C. A. §§ 306 and 309. The District Court denied the injunction and dismissed the suit, and the Commission has appealed.

The basis of the trial court's action was its considered view that the hauling of dressed poultry was a hauling of an agricultural commodity, and that the operation therefore was exempt from the certificating requirements of Part II of the Interstate Commerce Act, 49 U. S. C. A. §§ 301 et seq., under the provision of § 303(b)(6) that "Nothing in this chapter, except the provisions of section 304 of this title relative to qualifications and maximum hours of service of employees and safety of operation or standards of equipment shall be construed to include * * * (6) motor vehicles used in carrying property consisting of ordinary livestock, fish (including shell fish), or agricultural (including horticultural) commodities (not including manufactured products thereof), if such motor vehicles are not used in carrying any other property, or passengers, for compensation."

In its resolution of whether dressed poultry represented an agricultural commodity or constituted "manufactured products thereof", the court considered the question on the basis of the legal, the legislative, and the industrial realities involved, taking into account the general concept and the decisional definition existing

[1] There was a stipulation that the poultry being hauled consisted of New York dressed poultry and eviscerated poultry. New York dressed poultry, according to the definition of the industry, is poultry from which the head and feathers have been removed and sometimes also the feet. Eviscerated poultry is poultry from which the head, feet, feathers and entrails have been removed, and the liver, heart and gizzard of which have been cleaned, wrapped and replaced in the carcass.

as to the term "manufacture", the indicated purpose of § 303(b)(6) reflected in its legislative history and given confirmation in the consistent treatment by Congress of the attempts made from time to time to get the language of the section changed, and the industrial fact that the exemption was not a matter of favor to truck operators but of policy toward farmers, in the friendly concern of Congress for agriculture and its inherent problems.

All of this was exhaustively covered in a 30-page printed opinion prepared by the court and published in 113 F. Supp. 599. That opinion is so complete—in its searching-out of the legislative history, its compiling of the relevant decisions, and its detailing of the attempts, thwartings and shiftings that have occurred in the Commission's treatment of the exemption from the aspect of motor-carrier significance and not of agricultural object [2]—that any discussion by us would only involve a repetition of this assembled material and a duplication of substantial publication expense. We agree fully with the views of the District Court and, in the situation thus existing, we affirm the judgment upon the basis of the court's opinion, 113 F. Supp. 599.

If we were to undertake to add a word, it would be simply to emphasize the inescapable fact that, when Congress, in its enactment of § 303(b), chose to change the language of the exemption here involved, as it had

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[2] Section 303(b) contains other special exemptions for the benefit of agriculture, as to which the Commission similarly has attempted to make a narrow, rigid construction. Thus, in *Interstate Commerce Commission* v. *Jamestown Farmers, U. F. Co-op.* T. A., 8 Cir., 151 F.2d 403, we rejected the Commission's construction of the exemption as to motor vehicles controlled and operated by a farmers' co-operative association, under § 303(b)(5), as not being in accord with the legislative intent.

been originally drafted and recommended by Charles F. [Joseph B.] Eastman, then Federal Coordinator of Transportation and long a member of the Interstate Commerce Commission, from one for motor vehicles used "exclusively in carrying * * * unprocessed agricultural products", to one for motor vehicles used "in carrying * * * agricultural commodities (not including manufactured products thereof), if such motor vehicles are not used in carrying any other property, or passengers, for compensation," the result necessarily was to put processed agricultural commodities, not rising to the state of a manufactured product, in the same class with unprocessed agricultural commodities, for purposes of the exemption.

Also, the statements made from the legislative floor, on which the amending action was predicated, that it was desired to make certain that pasteurized milk and ginned cotton would be left outside the certificating requirements of the Act, necessarily implied a recognition that, in the realities of agricultural marketing and distribution, certain processing incidents were inherent in or commercially attendant upon the existence of an outlet for the farmer, at a local or relatively local level, for various of his commodities, as a step in the channelizing of them into their natural-commodity market, and that the degree of freedom and flexibility allowed in the further transportation of such processed commodities, not reaching a manufactured state, was as much and as directly linked with the ability of the farmer to sell these commodities conveniently or to receive an advantageous price for them as in the case of unprocessed agricultural commodities. In other words, Congress obviously intended that, as a matter of rela-

tionship to the agricultural economy, the accomplishing of a distribution of processed agricultural commodities, not constituting manufactured products, should, within the necessities or practicalities of a marketing of them as such, be made to have no more transportational impact upon the farmer than the marketing of his unprocessed commodities.

And, within the realities of marketing and distributing poultry, the dressing thereof at the local market level would seem to be no more of a step in the disposing of it as poultry than would the pasteurizing of milk or the ginning of cotton in disposing of them as milk and cotton. Certainly, no less could hardly be done to make practicable the hauling of poultry as such, for natural food purposes, than a removing of the head and feathers thereof. Nor is it claimed here that there is any difference between New York dressed poultry and eviscerated poultry in relation to the question of manufactured products. The position of the Commission in its naked effect—though not thus baldly phrased—is simply that, as a matter of giving motor-carrier regulation as full a scope as possible, a chicken should be regarded as being converted into a manufactured product whenever its head has been cut off.[3] Neither the language nor the spirit of the agricultural exemption warrants us in adopting any such artificial concept and curb in the realities of marketing agricultural commodities.

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[3] The statistics of the Department of Agriculture show that poultry is the third highest source of gross income to farmers in the field of agriculture. Poultry and Egg Statistics (October, 1953), U. S. Department of Agriculture, Production and Marketing Administration, Poultry Branch, pp. 17-18.

It may incidently be noted that the Secretary of Agriculture takes the position that the Commission's construction and application of the agricultural exemption are untenable, and that both in the trial court and here he has appeared as amicus curiae, in opposition to the Commission's views. Representatives of various certificated trucking interests have of course also appeared, as amicus curiae in support of the Commission's position.

Affirmed.

JUDGMENT

This cause came on to be heard on the record from the United States District Court for the Northern District of Iowa, and was argued by counsel.

On Consideration Whereof, it is now here ordered and adjudged by this Court, that the judgment of the said District Court, in this cause, be, and the same is hereby, affirmed.

MAY 11, 1954.

Clerk, U. S. Court of Appeals, Eighth Circuit.

APPENDIX B

PERTINENT PROVISIONS OF THE STATUTE

Declaration of policy:

[*Added September 18, 1940.*] [*U. S. Code, title 49, notes preceding secs. 1, 301, and 901.*] It is hereby declared to be the national transportation policy of the Congress to provide for fair and impartial regulation of all modes of transportation subject to the provisions of this Act, so administered as to recognize and preserve the inherent ad-

vantages of each; to promote safe, adequate, economical, and efficient service and foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices; to cooperate with the several States and the duly authorized officials thereof; and to encourage fair wages and equitable working conditions;—all to the end of developing, coordinating, and preserving a national transportation system by water, highway, and rail, as well as other means, adequate to meet the needs of the commerce of the United States, of the Postal Service, and of the national defense. All of the provisions of this Act shall be administered and enforced with a view to carrying out the above declaration of policy.

Section 203(a)(14) of the Interstate Commerce Act provides:

The term "common carrier by motor vehicle" means any person which holds itself out to the general public to engage in the transportation by motor vehicle in interstate or foreign commerce of passengers or property or any class or classes thereof for compensation, whether over regular or irregular routes, except transportation by motor vehicle by an express company to the extent that such transportation has heretofore been subject to part I, to which extent such transportation shall continue to be considered to be and shall be regulated as transportation subject to part I.

Sec. 203 (15) The term "contract carrier by motor vehicle" means any person which, under individual contracts or agreements, engages in the transportation (other than transportation referred to in paragraph (14) and the exception therein) by motor vehicle of passengers or property in interstate or foreign commerce for compensation.

Section 203 (16) The term "motor carrier" includes both a common carrier by motor vehicle and a contract carrier by motor vehicle.

Section 203(b)(6) Nothing in this part, except the provisions of section 204 relative to qualifications and maximum hours of service of employees and safety of operation or standards of equipment shall be construed to include * * * (6) motor vehicles used in carrying property consisting of ordinary livestock, fish (including shell fish), or agricultural (including horticultural)[4] commodities (not including manufactured products thereof), if such motor vehicles are not used in carrying any other property, or passengers, for compensation; * * *.

Sec. 206 (a) (1) Except as otherwise provided in this section and in section 210a, no common carrier by motor vehicle subject to the provisions of this part shall engage in any interstate or foreign operation on any public highway, or within any reservation under the exclusive jurisdiction of the United States, unless there is in force with respect to such carrier a certificate of public convenience and necessity issued by the Commission authorizing such operations: *Provided, however,* That, subject

[4] "Including horticultural" was added by Act approved July 9, 1952 (66 Stat. L. 479).

to section 210, if any such carrier or predecessor in interest was in bona fide operation as a common carrier by motor vehicle on June 1, 1935, over the route or routes or within the territory for which application is made and has so operated since that time, or if engaged in furnishing seasonal service only, was in bona fide operation on June 1, 1935, during the season ordinarily covered by its operation and has so operated since that time, except in either instance as to interruptions of service over which the applicant or its predecessor in interest had no control, the Commission shall issue such certificate without requiring further proof that public convenience and necessity will be served by such operation, and without further proceedings, if application for such certificate is made to the Commission as provided in paragraph (b) of this section and within one hundred and twenty days after this section shall take effect, and if such carrier was registered on June 1, 1935, under any code of fair competition requiring registration, the fact of registration shall be evidence of bona fide operation to be considered in connection with the issuance of such certificate. Otherwise the application for such certificate shall be decided in accordance with the procedure provided for in section 207(a) of this part and such certificate shall be issued or denied accordingly. Pending the determination of any such application the continuance of such operation shall be lawful: *And provided further,* That this paragraph shall not be so construed as to require any such carrier lawfully engaged in operation solely within any State to obtain from the Commis-

sion a certificate authorizing the transportation by such carrier of passengers or property in interstate or foreign commerce between places within such State if there be a board in such State having authority to grant or approve such certificates and if such carrier has obtained such certificate from such board. Such transportation shall, however, be otherwise subject to the jurisdiction of the Commission under this part.

SEC. 209(a)(1) Except as otherwise provided in this section and in section 210a, no person shall engage in the business of a contract carrier by motor vehicle in interstate or foreign commerce on any public highway or within any reservation under the exclusive jurisdiction of the United States unless there is in force with respect to such carrier a permit issued by the Commission, authorizing such person to engage in such business; *Provided,* That, subject to section 210, if any such carrier or a predecessor in interest was in bona fide operation as a contract carrier by motor vehicle on July 1, 1935, over the route or routes or within the territory for which application is made and has so operated since that time, or if engaged in furnishing seasonal service, only, was in bona fide operation on July 1, 1935, during the season ordinarily covered by its operations, except in either instance as to interruptions of service over which the applicant or its predecessor in interest had no control, the Commission shall issue such permit, without further proceedings, if application for such permit is made to the Commission as provided in paragraph (b) of this section and within one hun-

dred and twenty days after this section shall take effect and if such carrier was registered on July 1, 1935, under any code of fair competition requiring registration, the fact of registration shall be evidence of bona fide operation to be considered in connection with the issuance of such permit. Otherwise the application for such permit shall be decided in accordance with the procedure provided for in paragraph (b) of this section and such permit shall be issued or denied accordingly. Pending determination of any such application the continuance of such operation shall be lawful. Any person, not included within the foregoing provisions of this paragraph, who or which is engaged in transportation as a contract carrier by motor vehicle when this section takes effect, may continue such operation for a period of one hundred and twenty days thereafter without a permit and, if application for such permit is made within such period, the carrier may, under such regulations as the Commission shall prescribe, continue such operation until otherwise ordered by the Commission: *Provided further,* That nothing in this part shall be construed to repeal, amend, or otherwise modify any Act or Acts relating to national parks and national monuments under the administrative jurisdiction of the Secretary of the Interior, or to withdraw such authority or control as may by law be held by the Secretary of the Interior with respect to the admission and operation of motor vehicles in any national park or national monument of the United States.

Section 222 (b) If any motor carrier or broker operates in violation of any provision of this part (except as to the reasonableness of rates, fares, or charges and the discriminatory character thereof), or any rule, regulation, requirement, or order thereunder, or of any term or condition of any certificate or permit, the Commission or its duly authorized agent may apply to the district court of the United States for any district where such motor carrier or broker operates, for the enforcement of such provision of this part, or of such rule, regulation, requirement, order, term, or condition; and such court shall have jurisdiction to enforce obedience thereto by a writ of injunction or by other process, mandatory or otherwise, restraining such carrier or broker, his or its officers, agents, employees, and representatives from further violation of such provision of this part or of such rule, regulation, requirement, order, term, or condition and enjoining upon it or them obedience thereto.

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In the Supreme Court of the United States

OCTOBER TERM, 1954

NO. 264

INTERSTATE COMMERCE COMMISSION, Petitioner

v.

ALLEN E. KROBLIN, INC.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Eighth Circuit (R.81) is reported in 212 F. 2d 555. The opinion of the United States District Court for the Northern District of Iowa (R. 13-71) is reported in 113 F. Supp. 599.

JURISDICTION

The judgement of the United States Court of Appeals for the Eighth Circuit was entered on May 11, 1954 (R. 81). The petition for a writ of certiorari was filed August 6, 1954. The jurisdiction of this Court is invoked under 28 U. S. C. Sec. 1254(1).

QUESTION PRESENTED

Whether the statutory exemption in Sec. 203(b)(6) of the Interstate Commerce Act (49 U.S.C. 303(b)(6) — for motor vehicles used in carrying agricultural commodities (not including manufactured products thereof) — is applic-

able to motor vehicles carrying New York dressed and eviscerated poultry.

STATUTE INVOLVED

The pertinent statutory provision is Sec. 203(b)(6) of the Interstate Commerce Act (52 Stat. 1237, 54 Stat. 921, 66 Stat. 479; 49 U.S.C. Sec. 303(b)(6)):

> "Nothing in this part, except the provisions of section 204 relative to qualifications and maximum hours of service of employees and safety of operation or standards of equipment shall be construed to include * * * (6) motor vehicles used in carrying property consisting of ordinary livestock, fish (including shell fish), are agricultural (including horticultural) commodities (not including manufactured products thereof), if such motor vehicles are not used in carrying any other property, or passengers, for compensation * * *."

STATEMENT

The Interstate Commerce Commission initiated this case on October 17, 1952, in the United States District Court for the Northern District of Iowa, Eastern Division, under the provisions of Secs. 204(a)(6) and 222(b) of Part II of the Interstate Commerce Act (49 U.S.C. Secs. 304(a)(6) and 322(b)), to enjoin the defendant from transporting, for compensation on public highways, dressed poultry in interstate commerce by motor vehicles until it procures a certificate of public convenience and necessity from the Commission (R. 1-4). The answer by the defendant, Kroblin, alleged, inter alia, that its motor vehicles carrying dressed poultry are exempt from regulation under Sec. 203(b)(6) of Part II of the Interstate Commerce Act (R. 5-6).

The parties stipulated as to all of the facts (R. 8-11), and the relevant facts are as follows:

The poultry transported by Kroblin consists of New York dressed poultry, i.e., poultry with the head and feathers

removed and in some instances with the feet also removed, and eviscerated poultry, i.e., poultry with the head, feet feathers, and entrails removed and with the liver, heart, and gizzard cleaned, wrapped, and replaced in the carcass (R. 8-9).

The poultry is killed and dressed at various plants in the state of Iowa. Each plant is equipped with a production chain upon which the fowls are placed and killed. They are then moved on the chain through the various stages of "processing" (R. 8), which consists of "removing the feathers, singeing, rubbing, and storing in a refrigerator room for precooling to a specific temperature prior to shipment" (R. 8-9).

The defendant, Kroblin, would, "if trial were had, produce a marketing specialist of the United States Department of Agriculture who would qualify as a specialist in the field of poultry husbandry," and who would testify that New York dressed and eviscerated poultry are "agricultural commodities" and not "manufactured products" (R. 9-11).

The District Court, in an exhaustive 30-page printed opinion, reviewed the legislative history and the relevant decisions and held that dressed poultry is an agricultural commodity and not a manufactured product within the meaning of Sec. 203(b)(6) of the Interstate Commerce Act (R. 13-71). The Court of Appeals affirmed "upon the basis" of the lower court's opinion (212 F. 2d at p. 556) and, in addition, the Court set forth additional views which compelled the conclusion that dressed poultry is an agricultural commodity.

The Secretary of Agriculture of the United States participated in the proceedings in the District Court and in the Court of Appeals, **amicus curiae**, in support of the position that dressed poultry is an agricultural commodity.

ARGUMENT:

The decision below affirming the findings of fact, conclusions of law, and opinion by the District Court is clearly

correct. The petition for a writ of certiorari presents no question warranting review by this Court.

1. **The legislative history of the exemption for agricultural commodities unequivocally manifests the Congressional purpose to exempt from Commission regulation as to rates, routes, and territories motor vehicles carrying processed agricultural commodities, such as dressed poultry.** The statutory term "agricultural commodities (not including manufactured products thereof)"[1] in Sec. 203 (b)(6) of the Interstate Commerce Act was carefully selected by the Congress. The original bill (S. 1629, 74th Cong., 1st Sess.) contained no specific exemption for motor vehicles used in carrying agricultural commodities. After lengthy hearings, the House Committee on Interstate and Foreign Commerce inserted an exemption for motor vehicles used "exclusively in carrying livestock or **unprocessed** agricultural products" (emphasis supplied; H. Rep. No. 1645, 74th Cong., 1st Sess., p. 1). Some Congressmen expressed the view in debate on the bill that the purpose of the amendment **in this form** was to benefit the farmer and the small private trucker who carried **unprocessed** agricultural products exclusively in the raw state ready for market (79 Cong. Rec. 12196, 12197, 12213, 12205). The Commission, in its petition for a writ of certiorari, pp. 14-18, has quoted profusely from the debate in Congress with respect to this earlier proposal for "unprocessed agricultural products." But that narrow, restricted exemption was not enacted. In further debate on the bill, other members of the House stated that the marketing of agricultural products even though subjected to processing should be free from regulation; and in order to avoid any doubt with respect to the intendment for a general and broad coverage of the exemption, an amendment was proposed and adopted so as to make the exemption applicable with respect to "agri-

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[1] The phrase "including horticultural" was added following the term "agricultural" by the Act of July 9, 1952 (66 Stat. 479).

cultural commodities (not including manufactured products thereof)."[2] The author of the amendment explained:

> * * * we have heard a good deal of discussion this afternoon as to what is a processed agricultural product, whether that would include pasteurized milk or ginned cotton. It was not the intent of the committee that it should include those products. Therefore, to meet the views of many Members we thought we would strike out the word "unprocessed" and make it apply only to manufactured products.[3]

The author of the amendment further explained that the term "manufactured products" does not include "cotton in bales or cottonseed transported from the ginneries to the market."[4] The action of Congress in substituting the broad phrase "agricultural commodities (not including **manufactured** products thereof)"[5] for the narrow phrase **"unprocessed** agricultural commodities"[5] unequivocally reveals the Congressional purpose to exempt motor trucks carrying processed agricultural commodities. The Commission, in its decision in 1951 in the **Determination of Exempt Agricultural Commodities,** 52M. C. C. 511, 523-524, expressly recognized that the exemption was broadened to include processed agricultural commodities, stating:

> * * * Although the object of the partial exemption as originally framed was to aid the farmer in marketing his products, the substitution of the present language for the words "unprocessed agricultural products" clearly resulted in a broadening of the exemption. That this is so was made plain by the chairman of the subcommittee sponsoring the amendment when he stated that pasteurized milk and ginned cotton were intended to come within the partial exemption.

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[2] 79 Congr. Rec. 12220.
[3] Ibid.
[4] Ibid.
[5] Italics supplied.

We think the commodities mentioned (ginned cotton and pasteurized milk) were intended to be illustrative of the types of processing permissible under the partial exemption as now phrased.

The two examples used on the floor of the House to explain the purpose of this liberalizing amendment — ginned cotton and pasteurized milk — refute any contention that the exemption is applicable only to agricultural commodities in their natural state as produced on farms and as have been subjected to such processing or treatment as is customarily performed on farms. Ginning cotton and pasteurizing milk are not operations customarily performed on farms.

In addition, the explanatory examples given on the floor of the House show that the exemption is applicable to the transportation of processed agricultural commodities even though the farmer no longer owns the processed commodity. For example, pasteurized milk is one of the agricultural commodities which is to be included within the exemption, and except for a small percentage of pasteurized milk which is handled by producer-distributors, the farmer sells his milk before it is pasteurized.[6] Also, in the case of ginned cotton, in some areas the farmer sells the cotton prior to ginning,[7] in which case the farmer never owns or transports the ginned cotton. And when the farmer retains ownership of the cotton until after it is ginned, it is a general or universal practice for the farmer to sell his ginned cotton to a local buyer.

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[6] **Marketing Margins and Costs for Dairy Products, U. S. Department of Agriculture, Bureau of Agricultural Economics, Technical Bulletin No. 936 (Nov. 1946), pp. 9-10; Larson, Agricultural Marketing (1951), pp. 283-287; Judkins, Principles of Dairying (1924), pp 159-167; Determination of Exempted Agricultural Commodities, 52 M. C. C. 511, 523-524.**

[7] **Larson, Agricultural Marketing (1951), p. 241.**

e. g., the ginner,[8] and therefore the ginned cotton is transported by middlemen and not by farmers. In the light of this compelling legislative history, the Commission has rejected its prior view — that the agricultural exemption is applicable only to agricultural commodities in their natural state as produced on farms and as have been subjected to such processing or treatment as is customarily performed on farms (generally referred to as the "channel of commerce" principle) — and the Commission now concedes that the agricultural exemption applies to agricultural commodities processed on or off of the farm and either before or after the farmer has sold the agricultural commodity. **Determination of Exempted Agricultural Commodities,** 52 M. C. C. 511, 522,525.

The legislative history clearly reveals the Congressional purpose to establish a broad and general exemption for motor vehicles transporting agricultural commodities both in their raw, natural state and after they have been processed for marketing. The action of Congress was a deliberate refusal to enact the narrow and constringent exemption originally proposed. A statute should not be construed to achieve a result which Congress has refused to approve. **Carey** v. **Donohue,** 240 U. S. 430, 437.

Events since the passage of the original statute underscore the legislative history at the time of the enactment of the Act. Subsequent to the enactment of the argicultural exemption, Congress has considered several proposals to restrict the scope of the exemption.[9] But Congress has con-

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[8] **Marketing of Cotton Producers' Local Markets,** U. S. Department of Agriculture, Production and Marketing Administration, Cotton Branch (Sept. 1949), pp. 1, 8, 9, 24, 25, 26, 33, 34; **Marketing Practices in Producers' Local Cotton Markets,** U. S. Department of Agriculture, Bureau of Agricultural Economics (May 1938, pp. 6, 9, 12, 14-16, 28.

[9] **See Omnibus Transportation Legislation,** House Committee Print, 76th Cong., 3rd Sess.; S. 2357, 82nd Cong., 2nd Sess.; S. Rep. No. 1615, 82nd Cong., 2d Sess.; H. Rep. No. 2175, 82nd Cong., 2d Sess.

sistently refused to enact such narrow, constringent measures. One bill (H. R. 7547, 81st Cong., 2d Sess.) would have specifically limited the argicultural exemption, in the case of poultry, to "live poultry," but, after extensive hearings were held, no action was taken on this bill.

In order to give effect to the literal terms of the Act and to the legislative history the broad exemption for "agricultural commodities (not including manufactured products thereof)" must be held applicable to dressed poultry.

2. **The decision by the Court of Appeals in this case is consistent with the prior court decisions.** It is well settled that the application of labor on a commodity — without converting it into a new and different article — does not change the commodity into a manufactured article. **Hartranft** v. **Wiegmann**, 121 U. S. 609; **United States** v. **Dudley**, 174 U. S. 670; **Anheuser-Busch Assn.** v. **United States**, 207 U. S. 556; **Fruit Growers, Inc** v. **Brogdex Co.**, 283 U. S. 1; and **Frazee** v. **Moffit**, 18 Fed. 584 (C. A. 2).

An orange which has been emersed in a solution to impregnate the rind with borax, thereby rendering it resistant to decay, is not a manufactured article since the orange "remains a fresh orange fit only for the same beneficial uses as theretofore." **Fruit Growers, Inc.** v. **Brodex Co.**, 283 U. S. 1, 11-13. Dressed lumber, i. e., lumber which has been planed, grooved, and tongued or beaded, is not a manufactured article. **United States** v. **Dudley**, 174 U. S. 670. Sea shells which had been subjected to processing whereby two or three layers of each shell were removed, the inner shell was polished on an emery wheel, and mottos were etched on the polished inner shell were not manufactured articles (**Hartranft** v. **Wiegmann**, 121 U. S. 609, 615) inasmuch as they "had not been manufactured into a new and different article, having a distinctive name, character or use from that of a shell." Corks which had been placed in a machine where blasts of air removed the dust, meal, bugs, and worms, and which were thoroughly

cleansed by washing and steaming to remove the tannin and germs to make the cork soft and elastic, were then placed in a drying machine, and finally were bathed in glycerine and alcohol to close the seams and to give the corks a coating were not manufactured articles. **Anheuser Bush Assn. v. United States,** 207 U. S. 556, 562. The Court held, in the **Anheuser-Busch** case that manufacture "implies a change, but every change is not manufacture, and yet every change in an article is the result of treatment, labor, and manipulation. But something more is necessary * * *. There must be transformation; a new and different article must emerge, 'having a distinctive name, charater or use.' " **Ibid.**

The United States Court of Appeals for the Sixth Circuit held, in **Interstate Commerce Commission** v. **Yeary Transfer Co., Inc.,** 202 F. 2d 151, that redried tobacco is an agricultural commodity and not a manufactured product within the meaning of Sec. 203(b)(6) of the Interstate Commerce Act. The Court rejected the Commission's contention that the processing of tobacco, which occured off of the farm and after the farmer had sold the tobacco, in machinery costing from $35,000 to $75,000, for the purpose of removing the moisture from the leaf and standardizing the moisture content, converted the leaf tobacco into a manufactured product. The Commission's narrow interpretation of the agricultural exemption has also been rejected by the courts in **Interstate Commerce Commission** v. **Service Trucking Co., Inc.,** 186 F. 2d 400, 402 (C. A. 3); **Interstate Commerce Commission** v. **Dunn,** 166 F. 2d 166 (C. A. 5); **Interstate Commerce Commission** v. **Love,** 77 F. Supp. 63 (E. D. La.), affirmed, 172 F. 2d 224 (C. A. 5); and **Florida Gladiolus Grower's Ass'n** v. **United States and Interstate Commerce Commission** (S.D. Fla.), No. T-2095, decided July 23, 1952.

The Commission relies, Pet. pp. 9-11, on **Interstate Commerce Commission** v. **Weldon,** 90 F. Supp. 873, 875 (W.D. Tenn.) in which case the Court accepted the view previously

advanced by the Commission in the **Monark Egg Cases,** 26 M. C. C. 615; 44 M. C. 15, that "Congress clearly intended, from the language, to exclude only 'agricultural commodities' in their natural state," and, therefore, that raw shelled peanuts were manufactured products — not agricultural commodities. But the District Court's opinion in the **Weldon** case was rendered prior to the decision of the Commission in the **Determination of Exempted Agricultural Commodities,** 52 M. C. C. 511, 522-525, in which the Commission expressly repudiated the theory previously advanced by the Commission in the **Monark Egg Cases.** On appeal to the United States Court of Appeals for the Sixth Circuit, the "appellant motor carrier (Weldon) conceded that raw shelled peanuts were manufactured products of agricultural commodities within the meaning of Sec. 203(b)(6) of the Interstate Commerce Act" and therefore the issue was "no longer" before that Court (Reply of Appellee (Interstate Commerce Commission) to Motion of Secretary of Agriculture for Permission to File Petition for Rehearing in **Weldon** v. **Interstate Commerce Commission,** No. 11,247 (C. A. 6)). The issue as to the meaning of the term "agricultural commodities" was not raised in Weldon's petition for a writ of certiorari. Following the Commission's complete change of position as to the scope of agricultural exemption (**Determination of Exempted Agricultural Commodities,** 52 M. C. C. 511, 522-525), the Court of Appeals for the Sixth Circuit held, in **Interstate Commerce Commission v. Yeary Transfer Co., Inc.,** 202 F. 2d 151, that processed agricultural commodities — in that case redried tobacco — come within the exemption of Sec. 203(b)(6) of the Interstate Commerce Act. Hence the decision in the case at bar is consistent with the decision of the Sixth Circuit in the **Yeary** case, and, also, is consistent with the prior decisions of this Court. The petition for a writ of certiorari presents no legal issue warranting review by this Court.

3. **There is no persuasive administrative construction by**

the Commission of Sec. 203(b)(6) of the Act which should influence the Court in determining the meaning of the agricultural exemption in the Act. In its report in 1951, in the Determination of Exempted Agricultural Commodities, 52 M. C. C. 511, 522-525, the Commission expressly repudiated the entire basis for its prior holding, in 1940 in the Monark Egg Case, 26 M. C. C. 615, that dressed poultry is a manufactured product. The Commission reached the same conclusion as to dressed poultry in the Determination case that it had previously reached in the Monark Egg Cases, but the Commission's decision in the Determination case contains no persuasive reasoning and manifests no administrative expertise as to the meaning of "agricultural commodities." Hence the Commission's conclusion in 1951 is not persuasive here. The issue in this case relates to the meaning of "agricultural commodities" as used by Congress, and the Commission is without power to fix definitely the meaning of those terms and to finally decide the limit of its own jurisdiction. Norwegian Nitrogen Co. v. United States, 288 U. S. 294, 325; United States v. Idaho, 298 U. S. 105; Davies Warehouse Company v. Bowles, 321 U. S. 144, 156. The administrative practice or construction in this case cannot prevail over the clear and explicit terms in the Act. Neuberger v. Commissioner, 311 U. S. 83, 88-89; Louisville & N. R. Co. v. United States, 282 U. S. 740, 759. An agency cannot by administrative practice finally decide the limits of its statutory power (Social Security Board v. Nierotko, 327 U. S. 358, 369-370,) and "where the question is one not wholly dependent upon matters within the expert, technical or statistical field in which the regulatory body is preeminently qualified to judge, but which primarily involves jurisdiction, the force of the administrative ruling is less than it would otherwise be." Interstate Commerce Commission v. Service Trucking Company, Inc., 186 F. 2d 400, 402 (C. A. 3).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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September, 1954

APPEARANCE

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